

# State of Colorado

---



**Bill Owens**  
*Governor*

**John Zakhem**  
*Board Chair*

**Kristin F. Rozansky**  
*Board Director*

**State Personnel Board**  
633 17<sup>th</sup> Street, Suite 1320  
Denver, Colorado 80202-3604  
Phone (303) 866-3300  
Fax (303) 866-5038

## Meeting Minutes October 18, 2005

The State Personnel Board met in public session on Tuesday, October 18, 2005, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

The meeting was called to order at approximately 9:15 a.m. Board members Donald J. Mares and John Zakhem were present in person. Elizabeth Salkind was present via teleconferencing. Troy Eid and Diedra Garcia were absent.

Kristin F. Rozansky, Board Director; Assistant Attorney General Pam Sanchez, Board Counsel; and Jane Sprague, General Professional III, were present in person.

### **I. REQUESTS FOR RESIDENCY WAIVERS**

#### **A. October 1, 2005 Report on Residency Waivers**

There were no residency waiver requests upon which to report this month.

### **II. PENDING MATTERS**

There were no pending matters before the Board this month.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

There were no Initial Decisions or Other Final Orders of the Administrative Law Judges or the Director on appeal to the Board this month.

### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Bridget G. Watkins v. Department of Public Health and Environment, Division of Disease Control and Environmental Epidemiology, State Personnel Board case number 2005G078.

With the recusal of Mr. Mares, the attorney of record, from this case, the matter was tabled until the next Board meeting because of the lack of a quorum.

- B. David Teigen v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2005G076(C).

The Board discussed that the granting of the request for oral argument in this case would open the record to issues not discussed before the Administrative Law Judge; that oral argument is permissible under the Administrative Procedures Act; and that it is in the Board's discretion to allow or deny oral argument. Ms. Salkind moved to deny Complainant's request for oral argument. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Mares, Ms. Salkind, and Mr. Zakhem.

Regarding Complainant's Petition to the Board to Overturn Administrative Law Judge's Recommended Decision, upon the determination that none of the Board's procedures or statutes provide for filing such a petition, Ms. Salkind moved to deny Complainant's Petition to the Board to Overturn Administrative Law Judge's Recommended Decision. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Mares, Ms. Salkind, and Mr. Zakhem.

Following a discussion of the concepts of the "temporary loan" of an employee versus the "transfer" of an employee, Mr. Mares moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- C. Mark Schornack v. Department of Human Services, Pueblo Regional Center, State Personnel Board case number 2006G005.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing on the following issues:

1. Did Respondent commit harassment based on gender against Complainant;
2. Did Respondent discriminate against Complainant based on gender in removing him from his Day Program Coordinator position, and did the

- agency engage in procedural irregularities or violations of law in that removal, thereby demonstrating pretext for intentional discrimination;
3. In view of the conduct Complainant alleges Weiser engaged in, is Complainant entitled to reinstatement of leave balances taken during stress related leave.

Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Mares, Ms. Salkind, and Mr. Zakhem.

## **V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. David Ruchman v. Department of Revenue, Enforcement Group, Hearings Division, State Personnel Board case number 2005B085 (September 26, 2005).

Complainant, a hearing officer, appealed his disciplinary termination, seeking reinstatement, back pay, benefits and attorney fees and costs, and alleging a violation of First Amendment political association rights. After hearing, the ALJ determined that Respondent did not meet its burden of proving that Complainant willfully violated its Emergency Action Plan and the two orders of his superiors to immediately evacuate the building by taking longer than he should have to evacuate; approximately two minutes does not equate to a willful refusal to evacuate. In addition, the ALJ found that Respondent failed to give candid and honest consideration to the significant mitigation before it in this matter, and erroneously considered a corrective action which should have been removed from Complainant's personnel file, rendering a decision that was arbitrary and capricious and a disciplinary action that was not within the range of reasonable alternatives. The ALJ concluded that Respondent did not terminate Complainant in part for exercising his First Amendment political association rights and attorney fees are not warranted. The ALJ rescinded Complainant's termination remanding the matter to the appointing authority to allow for alternate disciplinary or corrective action, not to exceed a thirty-day suspension without pay, and awarding Complainant back pay and benefits to the date of reinstatement.

## **VI. REVIEW OF THE MINUTES FROM THE SEPTEMBER 20, 2005 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Salkind moved to approve the minutes of the September 20, 2005 meeting as submitted. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Mares, Ms. Salkind, and Mr. Zakhem.

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 20, 2005 PUBLIC MEETING:**

- A. Elaine Lanphier v. Department of Public Health and Environment, Laboratory Radiation Services, State Personnel Board case number 2003B017.

The Board voted to deny Complaint's Motion for One-Day Extension of Time to File Notice of Appeal as untimely, to grant Respondent's Motion to Dismiss, and to dismiss Complainant's appeal of the Initial Decision of the Administrative Law Judge.

- B. Freddie Montoya v. Colorado State University at Pueblo, State Personnel Board case number 2005B059.

The Board voted to grant Respondent's Motion to Strike Complainant's Exhibit A to his Appeal Brief and any reference thereto, to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge, and to make the Initial Decision of the Administrative Law Judge an Order of the Board.

- C. Brenda Johnson v. Department of Human Services, State Personnel Board case number 2005G053.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

## **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

Paul Farley, Deputy Executive Director of the Department of Personnel and Administration (DPA), reported to the Board on the status of the investigation into the Department of Corrections (DOC) layoff cases, as requested by the Board, mentioning the following pertinent points:

- DPA's Division of Human Resources (DHR) is conducting the investigation. Six DHR staff members are involved with Laurie Benallo heading up the investigative team;
- An entrance meeting was held on August 23, 2005 with DOC. DOC has been very cooperative and Executive Director Joe Ortiz is open to improving DOC's layoff process;
- The DHR team has reviewed DOC's records on the May 2003 layoff process and the Board's pleading files arising out of appeals of that process;

- The DHR team as examined 181 cases regarding first-round retention rights, as well as a sampling of second- and third-round retention rights cases;
- Seniority, time bands, qualifications, retention rights and issues on appeal to the Board, among other things, are being reviewed;
- The investigation is being used as an examination of system-wide issues for DOC;
- Major players have been interviewed, and the DHR team is commencing a second round of interviews;
- DPA hopes to have a report completed sometime in late October or early November and available to the Board for its December meeting.

Mr. Farley also gave the Board a packet containing background information on the multiple vacancy rule.

## **IX. ADMINISTRATIVE MATTERS & COMMENTS**

A. ADMINISTRATIVE MATTERS – the Board reviewed information on the following topics, all contained in documents provided to the Board in its packet:

- Budget Report and Revenue and Expense Report
- Cases on Appeal to the Board and to Appellate Courts
- Cases Scheduled for Preliminary Review
- Web Site Statistics: July 2005 - 41,297; August 2005 - 31,994; September 2005 - 29,147

### **B. OTHER BOARD BUSINESS**

- Staff Activities

In addition to those decisions contained in this month's packet, Director Rozansky reported that Andrea Woods attended Access training during October as part of the process of cross training Board staff in various functions. Director Rozansky will be conducting the mandatory six-month coaching for the performance cycle on or before November 7, 2005. Finally, since the last Board meeting (September 20, 2005), the Board staff has, out of twenty business days, handled eighteen (18) days of hearings, settlement conferences, and telephone hearings or commencements.

### **C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC**

## **X. PROPOSED LEGISLATION AND/OR RULEMAKING**

**XI. EXECUTIVE SESSION**

A. Case Status Report

B. Minutes of the September 20, 2005 Executive Session

The meeting adjourned by consensus.

**APPROVED THIS 15th DAY OF NOVEMBER, 2005.**

---

John Zakhem, Chair

---

Donald J. Mares, Member

---

Elizabeth Salkind, Member